

1 Robert A. Mittelstaedt (State Bar No. 60359)  
2 ramittelstaedt@jonesday.com  
3 Craig A. Waldman (State Bar No. 229943)  
4 cwaldman@jonesday.com  
5 David C. Kiernan (State Bar No. 215335)  
6 dkiernan@jonesday.com  
7 Lin W. Kahn (State Bar No. 261387)  
8 linkahn@jonesday.com  
9 JONES DAY  
10 555 California Street, 26th Floor  
11 San Francisco, CA 94104  
12 Telephone: (415) 626-3939  
13 Facsimile: (415) 875-5700

14 Attorneys for Defendant  
15 Adobe Systems Inc.

16 UNITED STATES DISTRICT COURT  
17  
18 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

19 IN RE: HIGH-TECH EMPLOYEE  
20 ANTITRUST LITIGATION

21 THIS DOCUMENT RELATES TO:  
22  
23 ALL ACTIONS

24 **Master Docket No. 11-CV-2509-LHK**

25 **DECLARATION OF LIN W. KAHN**  
26 **IN SUPPORT OF DEFENDANTS'**  
27 **JOINT RESPONSE TO PLAINTIFFS'**  
28 **ADMINISTRATIVE MOTION TO**  
**FILE UNDER SEAL PORTIONS OF**  
**PLAINTIFFS' MOTION TO**  
**EXCLUDE EXPERT TESTIMONY**  
**PROFFERED BY DEFENDANTS**

Date Consolidated Amended Compl. Filed:  
September 13, 2011

1 I, Lin Wang Kahn, declare as follows:

2 1. I am an attorney with the law firm of Jones Day, counsel for Defendant Adobe  
3 Systems Inc. ("Adobe") in the above-captioned action. I am admitted to practice law before this  
4 Court. I submit this declaration in support of Defendants' Joint Response to Plaintiffs'  
5 Administrative Motion to File Under Seal Plaintiffs' Motion to Exclude Expert Testimony  
6 Proffered by Defendants and related documents. As an attorney involved in the defense of this  
7 action, unless otherwise stated, I have personal knowledge of the facts stated in this declaration  
8 and if called as a witness, I could and would competently testify to them.

9 2. I have reviewed Plaintiffs' Notice of Motion and Motion to Exclude Expert  
10 Testimony Proffered by Defendants ("Motion to Exclude"), the Declaration of Lisa J. Cisneros in  
11 Support of Plaintiffs' Motion to Exclude Expert Testimony Proffered by Defendants ("Cisneros  
12 Decl. ISO Motion to Exclude"), Declaration of Lisa J. Cisneros in Support of Plaintiffs' January  
13 9, 2014 Administrative Motion to Seal ("Cisneros Decl. ISO Motion to Seal"), and supporting  
14 exhibits.

15 3. As described below, the information requested to be sealed contains or  
16 summarizes Adobe's compensation and recruiting data, practices, strategies and policies. Adobe  
17 has designated this information as "CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant  
18 to the Protective Order in this case. (Dkt. No. 107).

19 4. The October 9, 2012 Declaration of Donna Morris In Support of Defendants' Joint  
20 Response to Plaintiffs' Administrative Motion to File Under Seal (Dkt. No. 196) ("10/9/2012  
21 Morris Decl."), the January 9, 2014 Declaration of Jeff Vijungco in Support of Motion to Seal  
22 (Dkt. No. 578), and the Declaration of Rosemary Arriada-Keiper in Support of Motion to Seal  
23 (Dkt. No. 579) establish that Adobe's compensation data, practices, strategies and policies, as  
24 well as its recruiting data, practices, strategies and policies (such as the information sought to be  
25 redacted below) are confidential and commercially sensitive. As stated in these declarations, it is  
26 Adobe's practice to keep such information confidential, for internal use only, and not to disclose  
27 them to the public.

28 5. Moreover, these declarations establish that the public disclosure of this

1 information would harm Adobe, including potentially impairing its competitive position in  
2 recruiting, hiring, and compensating employees. Morris, Vijungco, and Arriada-Keiper declared  
3 that Adobe derives independent economic value from keeping its compensation data and  
4 compensation, recruiting and hiring practices, strategies, and policies confidential, including  
5 keeping it from other persons and entities who could obtain economic value from its disclosure or  
6 use.

7 6. Furthermore, as stated in the above declarations, the public disclosure of this  
8 information, created for internal use, would give third-parties insights into confidential and  
9 sensitive aspects of Adobe's operations and deprive Adobe of its investment in developing these  
10 practices, strategies, and policies. These declarations further establish that such disclosure would  
11 give other entities an unearned advantage by giving them the benefit of knowing how Adobe  
12 compensates employees and Adobe's compensation, recruiting, and hiring practices, strategies,  
13 and policies.

14 7. In addition to the above, Adobe's declarations filed in support of the Opposition to  
15 Plaintiffs' Motion for Class Certification also establish the confidentiality of Adobe's  
16 compensation and recruiting data, practices, strategies and policies. In particular, the Declaration  
17 of Donna Morris of Adobe Systems Inc. in Support of the Opposition to Plaintiffs' Motion for  
18 Class Certification (Dkt. No. 215, Exhibit 14) ("11/9/2012 Morris Decl."), paragraph 3,  
19 establishes that Adobe's salary and compensation data, policies and strategies are confidential and  
20 that public dissemination of that information could cause Adobe competitive harm. The  
21 Declaration of Jeff Vijungco of Adobe Systems Inc. in Support of the Opposition to Plaintiffs'  
22 Motion for Class Certification (Dkt. No. 215, Exhibit 15) ("Vijungco Decl."), paragraph 3,  
23 similarly establishes that Adobe's recruiting and hiring data, policies and strategies are  
24 confidential and that public dissemination of that information could cause Adobe competitive  
25 harm.

26 8. Specifically, Adobe seeks to keep the redacted portions of the following exhibits to  
27 the **Cisneros Decl. ISO Motion to Exclude** under seal:  
28

**Exhibit 2, the Expert Report of Lauren Stiroh, Ph.D.**

9. Paragraphs 20 to 28 contains confidential Adobe compensation information, including types of compensation Adobe provides employees, how Adobe differentiates employee compensation, and criteria and process Adobe uses to determine employee compensation;

10. Paragraphs 193 and 201 contain confidential information regarding specific components of Adobe's compensation package;

11. Exhibits III.3-8 reveal confidential information regarding the average compensation for Technical Class members and the average for the various components of Adobe's compensation package;

12. Exhibit IV.1 reveals confidential information regarding Adobe's hiring and recruiting data and the confidential records regarding previous employers;

13. Exhibit IV.10, Exhibit IV.14, Exhibit IV.24, and Exhibit IV.29 reveal confidential compensation information for specific individuals, identified by job title, gender, tenure, and age;

14. Exhibit IV.15 reveals confidential information about Adobe's job titles and number of employees for each specific job title.

**Exhibit 4, the Expert Report of David Lewin, Ph.D.:**

15. Page 2, heading VI.C contains personally identifying information.

16. Page 15, portion of paragraph 28 contains confidential information about the structure of Adobe's recruiting organization. This is internal confidential Adobe information that directly relates to Adobe's recruiting and hiring strategies and practices.

17. Page 15, Figure 1 contains confidential information about Adobe's hiring trends. This is internal confidential Adobe information that directly relates to Adobe's recruiting and hiring methods, strategies, practices and data.

18. Page 16, portion of paragraph 30 contains confidential information about channels through which Adobe recruits and hires employees. This is internal confidential Adobe information that directly relates to Adobe's recruiting and hiring methods, strategies, practices and data.

19. Page 19 to 20, Figures 2 and 3 contain confidential information about Adobe's

1 hiring trends. This is internal confidential Adobe information that directly relates to Adobe's  
2 recruiting and hiring methods, strategies, practices and data.

3 20. Pages 30 to 31, portion of paragraph 51 contains confidential about Adobe's job  
4 titles. This is internal confidential Adobe information that directly relates to Adobe's  
5 compensation methods, strategies, practices and data.

6 21. Page 31 to 34, Figures 4 to 8 and paragraph 52 contain confidential information  
7 about Adobe's compensation of a certain category of employees over time. This is internal  
8 confidential Adobe information that directly relates to Adobe's compensation methods, strategies,  
9 practices and data.

10 22. Pages 34 to 36, heading VI.C, portions of paragraphs 53 to 55, the title of Table 1,  
11 footnotes 57 to 58, and the title of Figure 9 contain personally identifying information.

12 23. Page 34, footnote 52 contains confidential information about Adobe's  
13 compensation of certain categories of employees over time. This is internal confidential Adobe  
14 information that directly relates to Adobe's compensation methods, strategies, practices and data.

15 24. Page 35, Table 1 contains confidential information about an Adobe employee's  
16 compensation over time. This is internal confidential Adobe information that directly relates to  
17 Adobe's compensation methods, strategies, practices and data.

18 25. Pages 35 to 37, footnotes 57 to 58, Figure 9, and portion of paragraph 55 contain  
19 confidential information about Adobe's compensation of a certain category of employees over  
20 time. This is internal confidential Adobe information that directly relates to Adobe's  
21 compensation methods, strategies, practices and data.

22 26. Page 38, the title of Table 2 contains personally identifying information.

23 27. Page 38, Table 2 contains confidential information about the movement of Adobe  
24 employees between job titles over time. This is internal confidential Adobe information that  
25 directly relates to Adobe's compensation, recruiting and hiring methods, strategies, practices and  
26 data.

27 28. Page 39 to 40, portion of paragraph 57 and Figure 10 contain confidential  
28 information about Adobe's average compensation and the distribution of new hire compensation.

1 This is internal confidential Adobe information that directly relates to Adobe's compensation  
2 methods, strategies, practices and data.

3 29. Page 41 to 44, portions of paragraph 59.i, 59.iii to 59.vi, and footnotes 64, 70, 74,  
4 and 81 contain confidential information about changes to Adobe's compensation policies and  
5 practices. This is internal confidential Adobe information that directly relates to Adobe's  
6 compensation methods, strategies, practices and data.

7 30. Page 50, footnote 107 contains personally identifying information.

8 31. Pages 51 to 55, portions of paragraphs 71, 72, and 74, footnote 114, and Figure 11  
9 contain confidential information about components of Adobe's employee compensation. This is  
10 internal confidential Adobe information that directly relates to Adobe's compensation methods,  
11 strategies, practices and data.

12 32. Page 59 to 60, portions of paragraphs 83 and 84 contain confidential information  
13 about Adobe employee compensation. This is internal confidential Adobe information that  
14 directly relates to Adobe's compensation methods, strategies, practices and data.

15 33. Page 60, Table 3 contains confidential information about Adobe employee  
16 compensation and job titles. This is internal confidential Adobe information that directly relates  
17 to Adobe's compensation methods, strategies, practices and data.

18 34. Exhibits 3A, 3C, 4A, and 5A contain confidential information about Adobe  
19 candidate sources. This is internal confidential Adobe information that directly relates to  
20 Adobe's recruiting and hiring methods, strategies, practices and data.

21 35. Exhibits 6A, 6B, 6C, 6D, and 6E contain confidential information about Adobe's  
22 hiring trend data. This is internal confidential Adobe information that directly relates to Adobe's  
23 recruiting and hiring methods, strategies, practices and data.

24 36. Exhibits 9A, 9B, 9C, 9D, 9E, 10A, 10B, 10C, 10D, and 10E contain confidential  
25 information about Adobe's compensation trends by job title over time. This is internal  
26 confidential Adobe information that directly relates to Adobe's compensation methods, strategies,  
27 practices and data.

28 37. Exhibits 11A, 11B, 11C, 11D, and 11E contain confidential information about

1 Adobe's compensation of certain categories of employees over time. This is internal confidential  
 2 Adobe information that directly relates to Adobe's compensation methods, strategies, practices  
 3 and data.

4 38. Exhibit 12 contains confidential information Adobe average Adobe compensation.  
 5 This is internal confidential Adobe information that directly relates to Adobe's compensation  
 6 methods, strategies, practices and data.

7 39. Appendix 1 contains confidential information about changes to Adobe's  
 8 compensation policies and practices. This is internal confidential Adobe information that directly  
 9 relates to Adobe's compensation methods, strategies, practices and data.

10 40. Appendix 4 contains confidential information about Adobe job titles. This is  
 11 internal confidential Adobe information that directly relates to Adobe's compensation methods,  
 12 strategies, practices and data.

13 **Exhibit 5, the Expert Report of Elizabeth Becker, Ph.D.:**

14 41. Page 7, the first bullet point of paragraph 26 contains confidential information  
 15 about Adobe's strategy, policies, and practices, specifically the factors considered when making  
 16 individual compensation decisions.

17 42. Redacted portions of paragraph 35 on page 10; footnotes 32, 34, and 35 on page  
 18 10; and footnote 38 on page 11 contain confidential information regarding Adobe's compensation  
 19 structure and the methods used in creating those structures.

20 43. Redacted portions of paragraphs 43-44 on page 12 contains confidential  
 21 information regarding guidelines provided to managers when making individual compensation  
 22 decisions.

23 44. Redacted portions of paragraphs 71-76, 78-80 on pages 19-22 and footnote 64 on  
 24 page 21 contain confidential information regarding Adobe's compensation structure, individual  
 25 compensation within that structure (including information based on confidential compensation  
 26 data), as well a personal confidential compensation information regarding the named plaintiffs  
 27 who worked at Adobe.

28 45. Redacted portions of paragraph 101 on pages 26-27 contain confidential

1 information regarding the numerous components of Adobe's compensation.

2 46. Redacted portions of paragraph 110 on page 28 contains confidential information  
3 regarding the comparison between base salary pay and equity pay.

4 47. Redacted portions of paragraphs 111 and 116 on pages 29 and 30 contain  
5 confidential compensation information regarding the named plaintiffs who worked at Adobe.

6 48. Redacted portions of paragraph 120 on page 32 contains confidential  
7 compensation information derived from Adobe's equity compensation data.

8 49. Redacted portions of paragraph 121 on page 32 contains confidential information  
9 regardin Adobe's departments and job titles.

10 50. Redacted portions of footnote 96 on page 25 contains confidential information  
11 regarding Adobe's compensation practices and policies on how managers make individual  
12 compensation decisions.

13 51. Redacted portions of paragraph 135 on page 36 contains confidential information  
14 regarding Adobe's compensation practice and policy.

15 52. Redacted portions of paragraph 139 on page 37 contains confidential information  
16 derived from Adobe's hiring/recruiting data and reveals confidential information regarding  
17 Adobe's recruiting and hiring practices.

18 53. Redacted portions of paragraph 149 and footnote 111 on page 39 contains  
19 confidential information regarding Adobe's compensation strategies, policies, and practices with  
20 respect to the use of market data and how managers make individual compensation decisions.

21 54. Attachment 3 to the Becker report, pages 1 through 12 contain specific  
22 compensation information for each job title at Adobe.

23 55. Exhibit A7, Appendix A7, and Appendix A8 to the Becker report contain specific  
24 compensation information for certain job titles at Adobe.

25 56. Exhibit A9 and Appendix A9 contain confidential information regarding the  
26 number of employees in each Adobe job code, revealing confidential internal personnel  
27 information.

28 57. Exhibit A10 and A11, and Appendix A10 and A11 contain confidential



1 information regarding the base salary ranges per year, for specific Adobe job titles.

2 58. Exhibit B3 and Appendix B3 contain confidential information regarding the ratio  
3 of equity grants relative to base salary for Adobe employees.

4 59. Exhibit C1 and Appendix C1 contain confidential information regarding the  
5 average equity grants awarded by Adobe by year.

6 60. Exhibit C2 and Appendix C2 contain confidential information regarding equity  
7 grants awarded to certain employees at Adobe.

8 61. Exhibit D2 and Appendix D2 contain confidential recruiting/hiring data regarding  
9 retention of employees, new hires, and departures.

10 62. Appendix E3 contains confidential information regarding Adobe's average annual  
11 wage, derived from Adobe's confidential compensation data.

12 **Exhibit 7, the November 25, 2013 Expert Report of Professor Kevin Murphy, Ph.D.:**

13 63. Appendix C-1 and Appendix D-1 contain confidential information about Adobe's  
14 recruiting and hiring trends. This is internal confidential Adobe information that directly relates  
15 to Adobe's recruiting and hiring methods, strategies, practices and data.

16 64. Appendix E is the November 12, 2012 Expert Report of Professor Kevin M.  
17 Murphy. Adobe previously sought to file under seal redacted portions of the November 12, 2012  
18 Murphy Report, which the Court granted in its order on September 30, 2013 (Dkt. No. 510).

19 65. Appendix F is the June 21, 2013 Supplemental Expert Report of Professor Kevin  
20 M. Murphy. Adobe previously sought to file under seal redacted portions of the June 21, 2013  
21 Murphy Report. A ruling on these sealing requests is pending. As stated previously, Adobe  
22 seeks to seal the following portions of the June 21, 2013 Murphy Report (see Dkt. No. 446):

23 • Redacted portion of paragraph 15, page 5 contains confidential information about  
24 Adobe's job title information and associated compensation data. This is internal confidential  
25 Adobe information that directly relates to Adobe's compensation strategies and practices.

26 • Redacted portions of Exhibit 1 contains confidential information about Adobe's  
27 job title information and associated compensation data. This is internal confidential Adobe  
28 information that directly relates to Adobe's compensation strategies and practices.

• Redacted portions of Exhibit 2 contains confidential information about Adobe's job title information and associated compensation data. This is internal confidential Adobe information that directly relates to Adobe's compensation strategies and practices.

• Redacted portions of Appendix B contains confidential information about Adobe's job titles. This is confidential Adobe information that pertains to Adobe's compensation and employee management practices.

**Exhibit 8, the Amended Expert Report of Edward A. Snyder, Ph.D.:**

66. Redacted portion of paragraph 38 and footnote 15 on page 18 contains confidential information regarding Adobe's recruiting and hiring strategies and practices.

**Exhibit 13, the July 12, 2013 Rebuttal Supplemental Expert Report of Edward E. Leamer:**

67. Adobe previously sought to file under seal redacted portions of this document. A ruling on these sealing requests is pending. As stated previously, Adobe seeks to seal the following portions of the July 12, 2013 Rebuttal Supplemental Expert Report of Edward Leamer (see Dkt. No. 463):

• Page 34, Figure 6 contains confidential information about Adobe's compensation data. This is internal confidential Adobe information that directly relates to Adobe's compensation strategies and practices.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 13th day of January 2014 in San Francisco, California.

By: /s/ Lin W. Kahn

Lin W. Kahn